



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 4, 2015

Ms. Audra Gonzalez Welter
Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2015-23167

Dear Ms. Welter:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 586315 (OGC# 163871).

The University of Texas at Arlington (the "university") received a request for a specified police report. The university states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. The university also states it notified the Grand Prairie Police Department of its receipt of the request for information. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the claimed exception and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the

Texas Supreme Court are delineated in *Industrial Foundation, Id.* at 683. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Furthermore, under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found.* at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.¹ *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. In addition, in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment in an employment context. Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude the remaining information is not confidential under common-law privacy and the decision in *Ellen* is not applicable. Therefore, the university may not withhold the remaining information under section 552.101 on that ground. Consequently, the university must release the remaining information to the requestor.²

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

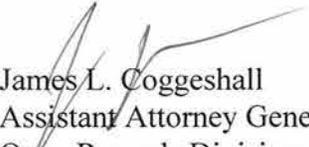
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

¹Section 552.102(a) exempts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

²Because the requestor has a special right of access to some of the information being released, the university must again seek a decision from this office if it receives another request for the same information from another requestor.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bhf

Ref: ID# 586315

Enc. Submitted documents

c: Requestor
(w/o enclosures)